

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 98-547-E - ORDER NO. 1999-123  
FEBRUARY 12, 1999

IN RE: Broad River Electric Cooperative, Inc.,	)	ORDER DETERMINING
	)	APPROPRIATE
Petitioner,	)	ELECTRIC PROVIDER
	)	
vs.	)	
	)	
Board of Public Works, City of Gaffney,	)	
	)	
Respondent.	)	
	)	

✓ MR

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Complaint of Broad River Electric Cooperative, Inc. (Broad River or the Coop.) against the Board of Public Works of the City of Gaffney (Gaffney or the Board) in which Broad River alleges that it is entitled to be the supplier of electricity to a new Hampton Inn being built on the site of the former Farmer Dom's produce stand. The Hampton Inn had requested that the Board provide its electricity, both on a temporary construction basis and permanently.

A hearing was held on this matter on January 26, 1999 at 2:30 PM in the offices of the Commission, with the Honorable William Saunders, Vice-Chairman, presiding. Broad River was represented by Robert E. Tyson, Jr., Esquire, and Trent N. Pruett, Esquire. The Board was represented by Robert T. Bockman, Esquire. The Commission Staff was represented by F. David Butler, General Counsel.

Broad River presented the testimony of Douglas Wilson and Richard Baines. Gaffney presented the testimony of Donnie L. Hardin. A.R. Watts testified for the Commission Staff.

Douglas Wilson, Manager of Operations for Broad River, testified that the area in question has undergone a great deal of commercial development in the last three years. Wilson noted that in 1971, when he first went to work for the Coop., the land had no residence, building or other structure that had electrical service. The area was used by the Caggiano family for peach growing purposes. Broad River did serve, beginning in 1944, a residence approximately a quarter of a mile west of the premises at issue. The Coop. also served a residential area about a mile northwest of the land in question. On December 14, 1978, however, Broad River began supplying electricity to a large building constructed by Mr. Caggiano on the site in question, which was used to sell farm produce and other items. This building was known as "Farmer Dom." Broad River had to construct facilities to serve this business. Wilson noted that electrical service by the Coop. was uninterrupted from 1978 until 1998, when Caggiano sold the premises to Imperial Investments of Gaffney.

Over the years, according to Wilson, Broad River expended monies to maintain the electrical service to Farmer Dom's, and had to re-route the Farmer Dom line some three years ago when construction of a mall commenced. The mall involved was the Carolina Factory Outlet Mall, and it was served by the Board. This property is now within the City of Gaffney, although the site at issue is not.

Whereas the entire Farmer Dom's building was razed so that the new Hampton Inn could be built, Wilson noted that several portions of the original Farmer Dom's premises remain. The driveway cuts from the Farmer Dom's premises still remain, and they constitute the driveway cuts for the Hampton Inn. Second, Broad River has an underground electrical line that runs to its pole on the Hampton Inn premises. Also, a fence that constituted a part of the Farmer Dom's premises still exists, and now surrounds the Hampton Inn structure. Wilson also notes that the new Hampton Inn is built mostly on the footprint of the Farmer Dom facility. Wilson stated that Broad River is able to provide the necessary load to the new Hampton Inn.

Richard Baines, Chief Executive Officer and President of Broad River also testified. Baines supported the testimony of Wilson. Baines also asks this Commission to affirm the right of Broad River to continue serving the premises which it has served since 1978. He also emphasized the importance of protecting the investment that the Coop. members have made in the construction of electrical lines; that the electrical service not be duplicated by providers of electricity; and that such providers be given the opportunity to serve future customers. Baines also commented on the public policy reasons for allowing Broad River to continue to serve the old Farmer Dom's premises, including stability and certainty, and to avoid unnecessary duplication of lines and facilities.

Donnie Hardin, General Manager of the Gaffney Board of Public Works, also appeared before this Commission at the hearing. Hardin noted that the area in question in this proceeding is unassigned territory. Hardin states that the Board has had its electric lines and facilities in the general area since 1986. According to Hardin, the Farmer Dom

facility was demolished several months before the Board began its temporary electrical service to the Hampton Inn property before construction began. Hardin notes that there are no physical remains of the old building, and there is no remaining Coop. service to the premises. Hardin explained that the Board received a letter from the Chief Executive Officer of Imperial Investments Gaffney, LLC, which will own and operate the Hampton Inn, requesting the Board's temporary and permanent electrical service. The Board asserts that demolition of the Farmer Dom building and replacement of it with a new building constitutes a new "premises," and therefore, the Board has the right to serve the Hampton Inn upon request.

The Commission Staff presented the testimony of A.R. Watts. Watts stated his belief that Broad River Electric Cooperative is the proper entity to provide electric service to the Hampton Inn in question. Watts reviewed various Commission Orders, which, he stated, have at least two common elements relevant to this case. The cases reviewed by Watts each involve the issue of initial choice of electric service provider and the determination thereof, and second, each case involves, to varying degrees, the changing or modification of the original premises, which initially required electric service. The cases considered by Watts discussed modification of original premises in several ways, from basic rewiring, to the addition of several buildings, to complete removal and replacement of buildings, structures, and facilities. The Commission determined in each case that conversion of premises and subsequent change in use did not disturb the right of the original electric provider to provide electricity to the premises; that the premises initially requiring service may not necessarily be transformed by

additional conversion and are not reconstituted into a new premises, and the old premises may not be reconstituted into a new one by a change in the physical plant. Watts states that the latter is true whether an old building is renovated or a new one constructed.

Watts also reviewed the policy reasons for such holdings. As stated in prior Commission Orders, the enactment of the Territorial Assignment Act was intended to establish and maintain an element of certainty and reliability in the designation of the rights of electric suppliers with regard to the areas in which such suppliers may provide service. In addition, the Commission found that the statutes were intended to reduce or eliminate wasteful and inefficient duplication of electrical facilities and services. Watts opined that these policy reasons are also appropriate for considerations for the present case, and, accordingly, that Broad River is the proper supplier to furnish electric service to the Hampton Inn. After a review of the evidence before us, the testimony of the witnesses, and the law, we agree with Watts.

The Board is attempting to serve the new Hampton Inn by asserting that the new building is a new premises initially requiring service under Section 58-27-620 (1)(d), which states as follows: "Every electric supplier shall have the right to serve: (d) If chosen by the consumer, any premises initially requiring electric service after July 1, 1969." Section 58-27-620(1)(d). Therefore, the crucial issue is whether the new Hampton Inn building constitutes a new premises. "Premises" is defined, in part, in Section 58-27-610, as follows:

The term "premises" means the building, structure, or facility to which electricity is being or is to be furnished....

The South Carolina Supreme Court has given “building” a broad definition: “That which is built; *a fabric framed and designed to stand more or less permanently* [emphasis of court]. Brown v. Sikes, 188 S.C. 288, 198 S.E. 854 (1938). Additionally, the Court has stated that a building is a “structure designed for habitation, shelter, storage....” State v. Myers, 313 S.C. 391, 438 S.E. 2d 236 (1991). The Georgia Supreme Court has held that the canopy attached to a filling station and resting on footings constituted a “building.” Turner v. Standard Oil Co. of Kentucky, 220 Ga. 498, 140 S.E. 2d 208 (1965). Furthermore, the term “building” is not necessarily limited to the structure itself, but includes the *land* on which the building stands. See Baggett v. Georgia Conference Ass’n of Seventh Day Adventists, 157 Ga. 488, 121 S.E. 838 (1924); S.F. Bowser & Co. v. Cain Auto Co., 210 S.W. 554 (Tex. Ct. App. 1919). Therefore, the term “premises” includes not only the actual building, but also the land on which the building stands.

Although “structure” and “facility” are not defined by statute, a “structure” may be defined in common usage as anything which is constructed or erected and use of which requires a more or less permanent location. Words and Phrases, “structure” citing Holsey Appliance Co. v. Burrow, 281 P. 2d 426 (Okla. Sup. Ct. 1955); and it includes a gasoline pump, Dunn v. Town of Gallup, 29 P. 2d 1053 (N.M. Sup. Ct. 1934); as well as a pipeline, Burke v. Illinois Power, 373 N.E. 2d 1354 (Ill.App. Ct. 1978); billboards, Whitman v. Miss. State Highway Comm., 400 F. Supp. 1050 (W.D. Mo. 1975); parking lots, Curators v. Neill, 397 S.W. 2d 666 (Mo. Sup. Ct. 1966); driveways, Beyt v. Woodvale Place Apts., 297 So. 2d 448 (La. Ct. App. 1974); and a canopy, Segaloff v. City of Newport News, 163 S.E. 2d 135 (Va. Ct. App. 1968).

“Facility” is an even more encompassing and broad term, defined as something “which promotes the ease of any action, operation, transaction, or course of conduct.” Caldwell v. McMillan, 224 S.C. 150, 77 S.E. 2d 798 (1953); Black’s Law Dictionary 591 (6<sup>th</sup> ed. 1990). The most concrete definition of facility comes from the Americans with Disabilities Act (ADA), whose regulations implementing the ADA classify facility as “all or any portion of buildings, structures, *sites*, complexes, rolling stock, or other conveyances, roads, walks, passageways, parking lots, or other real personal property, including the *site* where the building, property, structure, or equipment is located [emphasis added].” New Topic Service Am. Jur. 2d Americans with Disabilities Act §623. Therefore, the premises consists of the entire *site* to which electric service is provided and on which the building, structure, or facility stands.

In the 1985 Aiken Electric Cooperative, Inc. v. South Carolina Electric & Gas Co. case, the Commission determined that several facilities or structures are considered to be one premises. In fact, the Commission’s order specifically stated:

Smile #11’s premises consisted of a number of structures including a large brick building which contained a liquor store, a convenience store/party shop, and a service station, four gasoline dispenser pumps,... a lighting system running down Martintown Road,...and the entire premises was paved with asphalt, concrete and/or gravel....

Aiken Electric Cooperative, Inc. v. South Carolina Electric & Gas Co., Docket No. 85-186-E, Order No. 85-1002 (1985). Therefore, fuel pumps, and even the *entire area underneath the asphalt* was considered to be the premises.

We have a similar case in the present situation. In this case, the Hampton Inn owners removed the Farmer Dom building and constructed essentially a replacement

building over the footprint of the old Farmer Dom premises. However, this replacement building is merely an extension of the existing premises. Broad River has an electrical line that runs to its pole on the Hampton Inn premises. Furthermore, Broad River has an underground line that goes to the site of the Farmer Dom premises. Also, a fence that constituted a part of the Farmer Dom premises still exists, and now surrounds the Hampton Inn structure on three sides.

Moreover, Hampton Inn constructors did not remove all of the existing premises. In particular, the driveway curb cuts still remain, constituting part of the extended premises. The 1985 order clearly states that “the entire premises was covered with asphalt, concrete and/or gravel....” Together, these buildings, structures, and facilities constitute the same premises to which electricity is being or is to be furnished. Consequently, we hold that the Board cannot claim that the existing premises was transformed into a new premises.

The Commission reiterated its 1985 position on this subject in Order No. 96-743, Docket No. 96-312-E issued on October 30, 1996 in the case of Laurens Electric Cooperative, Inc. v. Duke Power Company. In that case, a building was initially constructed to provide housing for Dean Steel Buildings, Inc. In 1987 Dean Steel Buildings, Inc. contracted for electric service with Laurens.

Subsequently, Dean Steel Buildings, Inc. moved out of the premises and the electric lines from Laurens lay dormant for some period of time. Carolina Coil then bought the building with the intention to reconstitute it into a new premises with two buildings to be served by one electric service meter. Carolina Coil wanted to operate out

of the existing building and a new building. Carolina Coil then requested that Duke provide all electrical service.

The Commission held that all of the buildings, either in existence or to be constructed by the industry, represent one premises. Additionally, the Commission disagreed with the argument that an old premises may be reconstituted into a new premises in this case just because of the addition of a building.

The Board seems to focus on the fact that there is a new building, which in turn makes this a new premises. However, according to case law, a new building does not transform a premises to the extent that the premises constitutes a new premises. A new building is merely an expansion of the premises, which is what the Commission decided in their 1985 Order and in Laurens Electric Cooperative, Inc. v. Duke Power, Order No. 96-743, Docket No. 96-312-E (1996).

In addition, in a similar case before the Commission, Carolina Power & Light Co. v. Pee Dee Electric Cooperative, Inc., Docket No. 79-298-E, the Commission held that the original electric supplier should serve the premises, despite the fact that the premises were to some degree modified. The Commission held that premises initially requiring electric service may not necessarily be transformed into a new premises by additional conversion.

There is a sound policy reason for the Commission's holding in the case as stated in that Order at 5:

The enactment of the statutory provisions currently codified in Sections 58-27-610 et. seq. was intended to establish and maintain an element of certainty and reliability in the designation of the rights of electric suppliers with regard to the areas in which such

suppliers may provide service. Furthermore, a related intention of the legislation was the reduction or elimination of wasteful and inefficient duplication of electrical facilities and services.

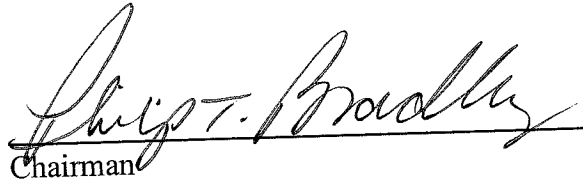
Carolina Power at 5. See also testimony of A.R. Watts.

The Board asserts that this is a new premises. However, this argument is flawed. Under § 58-27-620 (1)(d), the law states that “every electric supplier has the right to serve: if chosen by the consumer, any premises initially requiring electric service after July 1, 1969.” Clearly, Hampton Inn is not a premises initially requiring electric service for the same reasons stated above. In 1978, the Farmer Dom facility initially chose its electric supplier, which was Broad River. Broad River has since served this premises for twenty years. Customer choice of an alternate provider is not available under these circumstances.


Accordingly, we hold that Broad River is the appropriate electric provider for the Hampton Inn. Since the Board is now serving the premises, we order that both parties shall cooperate in ensuring an orderly transition to the proper electric provider, Broad River.

This Order shall remain in full force and effect until further Order of the  
Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)